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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,691	02/07/2002	Johannes Antonius Gerardus Wilhelmus Zigmans	00601.0425-US-WO	5116

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MINNEAPOLIS, MN 55344-7704

EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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11/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 09/937,691	Applicant(s) ZIGMANS ET AL.	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4, 13-17 and 23-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/03/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-22, and species II, Figures 2-3, in the reply filed on 08/30/2007 is acknowledged.
2. Applicant pointed out claims 1-12 and 18-22 encompassing the elected species II. However, claim 4 is not readable on Fig. 2 of the elected species but rather Fig. 1 of species I. Thus, claims 1-3, 5-12 and 18-22 are readable on the elected species.
3. Claims 4, 13-17, 23-30 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to the nonelected species and invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08/30/2007.

### ***Information Disclosure Statement***

4. The information disclosure statement filed 11/03/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. There are 3 documents not provided.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1-3, 5-12 and 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claim 1, the phrase "such as" and "for instance" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

8. Claim 5 recites the limitation "the housing" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3, 5-10, 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McAuley (5,568,990).

The McAuley reference discloses a device for treating a surface comprising a holder with a reservoir (container not shown) with a sponge-like body 18 via which the substance absorbed from the reservoir can be spread on the surface, between the reservoir and the sponge-like body there is at least one receiving chamber 25 having an inflow opening 30 communicating with the reservoir, which inflow opening is closed in the condition of rest of the device and can be opened at a movement of the sponge-like body 18 with respect to a plane with which this body is contacted, while from the

receiving chamber the substance is absorbed by the sponge-like body with delay, there is a dosing element 32 extending in the receiving chamber which, at a movement of the sponge-like body with respect to and in contact with the surface to be treated, effects that liquid substance can be absorbed by the sponge-like body, the receiving chamber is bounded by the dosing element and the housing 12 of this dosing element and is provided with an outflow opening 24 via which the liquid substance can be supplied to the sponge-like body, the inflow opening 30 being larger than the outflow opening 24, and the inflow opening being releasable by a movement of the sponge-like body with respect to the surface to be treated, the inflow opening is released by moving the dosing element away from the surface to be treated, in particular as a result of the compression of the sponge-like body on the surface to be treated, the dosing element is movable against spring action in the direction away from the surface to be treated, there is an aeration opening (an annular gap between member 32 and sleeve 26) which connects the receiving chamber 25 with a space between the receiving chamber and the sponge-like body, the outflow opening 29 is formed by a gap between the housing 26 of the receiving chamber and the dosing element extending therethrough.

11. Claims 1, 3, 5-12, 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Villahoz (6,478,497).

The Villahoz reference discloses a device for treating a surface comprising a holder with a reservoir 1 with a sponge-like body 3 via which the substance absorbed from the reservoir can be spread on the surface, between the reservoir and the sponge-like body there is at least one receiving chamber having an inflow opening 13

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communicating with the reservoir, which inflow opening 13 is closed in the condition of rest of the device and can be opened at a movement of the sponge-like body 3 with respect to a plane with which this body is contacted, while from the receiving chamber the substance is absorbed by the sponge-like body with delay, there is a dosing element 9 extending in the receiving chamber which, at a movement of the sponge-like body with respect to and in contact with the surface to be treated, effects that liquid substance can be absorbed by the sponge-like body, the receiving chamber is bounded by the dosing element and the housing 17 of this dosing element and is provided with an outflow opening 15 via which the liquid substance can be supplied to the sponge-like body, the inflow opening 13 being larger than the outflow opening 15, and the inflow opening being releasable by a movement of the sponge-like body with respect to the surface to be treated, the inflow opening is released by moving the dosing element away from the surface to be treated, in particular as a result of the compression of the sponge-like body on the surface to be treated, the dosing element is movable against spring action in the direction away from the surface to be treated, there is an aeration opening (channel) which connects the receiving chamber with a space between the receiving chamber and the sponge-like body, the outflow opening 15 is formed by a gap between the housing 17 of the receiving chamber and the dosing element extending therethrough.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAuley.

Although the McAuley reference does not explicitly disclose the amount of substance filled the receiving chamber in the range of 0.05-1 ml, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a valve within a certain range of amount of substance to best fit a particular McAuley applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

14. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAuley in view of Villahoz (6,478,497).

Although the McAuley reference does not disclose the application device have two chambers, attention is directed to the Villahoz reference which teaches an application device having two receiving chambers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the McAuley application device more than one receiving chamber in view of Villahoz for facilitating more even distribution of the substance to a surface.

15. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAuley.

Although the McAuley reference does not explicitly disclose the viscosity of substance in the range of 500 and 9000 mm<sup>2</sup>sec<sup>1</sup>, the viscosity of the active component

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of the substance being greater than  $10,000 \text{ mm}^2\text{sec}^{-1}$  and the viscosity of the auxiliary component of the substance being less than  $5,000 \text{ mm}^2\text{sec}^{-1}$ , it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a thickness within a certain range or values of viscosity for substance to best fit a particular McAuley applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

16. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Villahoz.

Although the Villahoz reference does not explicitly disclose the amount of substance filled the receiving chamber in the range of 0.05-1 ml, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a valve within a certain range of amount of substance to best fit a particular Villahoz applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

17. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villahoz.

Although the Villahoz reference does not explicitly disclose the viscosity of substance in the range of 500 and  $9000 \text{ mm}^2\text{sec}^{-1}$ , the viscosity of the active component of the substance being greater than  $10,000 \text{ mm}^2\text{sec}^{-1}$  and the viscosity of the auxiliary component of the substance being less than  $5,000 \text{ mm}^2\text{sec}^{-1}$ , it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a thickness within a certain range or values of viscosity for substance to best fit a



particular Villahoz applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schwartzman discloses an application device having a dosing element and a valve.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Huyen Le*